IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 626 OF 2002

Pratap Vishvanath Dhavare,]
Convict No. C/12365, Yeravada Central Prison,]
Pune 6.] ...Appellant

VERSUS

The State of Maharashtra] ...Respondent

Mr. V.N. Kamble for the Appellant (appointed)

Dr. F.R. Shaikh, Additional Public Prosecutor,
for the Respondent.

CORAM: **V.G. PALSHIKAR, Ag. C.J., &**
SMT. NISHITA MHATRE, J.
DATE: SEPTEMBER 7, 2006.

JUDGMENT (Per Palshikar, Ag. C.J.)

This appeal is directed against the judgment of conviction recorded under Section 302 of the Indian Penal Code by the II Additional Sessions Judge, Solapur, sentencing the accused to suffer imprisonment for life and to pay a fine of Rs.10,000/-.

2. With the assistance of the learned advocate appearing on behalf of the accused (appointed by Court) and the learned Additional

Public Prosecutor, we have scrutinised the record and re-appreciated the evidence therein. The prosecution case, stated briefly, is that the accused, Pratap, and the victim were married. The accused had grievance against his wife, and, therefore, on 26th September, 2000 in the night at around 9.30, he burnt his wife to death. The injured was taken to hospital, where she disclosed that she was put on fire by her husband. Thereafter, her dying declaration was recorded; the First Information Report was recorded; investigation started, the accused was arrested on 2nd October, 2000; and on completion of the investigation, he was charged under Section 302 of the Indian Penal Code for causing intentional death of his wife. The prosecution examined as many as 12 witnesses to prove its case; and the learned trial Judge, on appreciation of the evidence, found the accused guilty of the offence. It is this order which is impugned in this appeal.

3. Learned advocate on behalf of the accused contended that the procedure required to be followed in law for recording a dying declaration has not been so recorded in this case. The dying declaration is not recorded in question-and-answer form, the certificates are not proper and, therefore, the dying declaration is liable to be rejected. He also contended that the second dying declaration is

also recorded, and is treated as the F.I.R. In the first dying declaration, which was duly recorded by the Special Executive Magistrate, there was no need for recording the second statement and treating it as the F.I.R. This action of the prosecution creates a doubt, requiring rejection of both the statements. According to the learned advocate, the evidence on record is not adequate to warrant the conviction under Section 302, I.P.C. These submissions were stoutly opposed by the learned Additional Public Prosecutor, who pointed out from the evidence that the entire evidence was unimpeachable, and was rightly accepted by the learned trial Judge. We have to consider these submissions in the light of the evidence as re-appreciated by us.

4. P.W.1, Chandrakant, is a neighbour of the victim and the accused, and at around 10.30 p.m., he heard the shouts of deceased Vimal, and, therefore, went to see what happened to her. He saw that Vimal was set on fire, and was burning. She told him that the accused had done the act. This witness has been cross-examined, and his cross-examination does not reveal anything which would require the witness to be disbelieved.

5. P.W.2, Bapurao, has proved the seizure of certain articles from the spot, and those articles connected the accused with the crime.

6. P.W. 3 is the daughter of the victim, who was 8 years of age when she saw the incident, and she has deposed to that effect. According to the learned prosecutor, the prosecution has proved its case even if the deposition of this witness is not taken into consideration.

7. P.W.4, Shantaram, is the Special Executive Magistrate, who recorded the dying declaration. He has very clearly deposed to the manner in which the declaration was recorded; the manner in which he saw the victim in a conscious condition and obtained the certificate to that effect of the attending doctor. He has also proved the certificate attached to the dying declaration. He has proved the declaration taken out by him.

8. P.Ws. 5, 6, 9 and 11 are police witnesses. They proved the documents executed by them or the evidence recorded by them. Basically, their evidence is corroborative in nature.

9. P.W.7 is the doctor, who admitted the victim to the hospital. He has deposed that when the patient was admitted, she was in a

conscious condition, and was in a position to depose. He speaks of the dying declaration recorded by the Special Executive Magistrate, P.W. 4. He has proved his endorsement, stating that the accused was in a physically and mentally fit condition to depose at that time.

10. P.W.8 is the brother of the victim, who has deposed about the previous conduct and the existing quarrels between the accused and the victim.

11. P.W.10, Dr. Archana, is the doctor, who conducted the *post-mortem*, and proved homicidal death due to burns and shock caused by them.

12. It is on appreciation of this evidence that the learned trial Judge came to the conclusion of guilt and convicted the accused, as aforesaid.

13. We have re-appreciated the evidence; we have scrutinised the dying declaration; and it will be clear from both of them that the learned trial Judge was correct in convicting the accused under Section 302, I.P.C. The first dying declaration was recorded at around 4.15 a.m. on 27th September, 2000, whereas the F.I.R. was recorded by the

Police at 5.15 a.m., i.e., after recording of the dying declaration. What has been taken down by the police officer is the statement on the basis of which the F.I.R. was lodged. It was not recorded as a dying declaration substantively when it was so recorded; but a scrutiny of both these documents goes to show that they corroborate each other on all material particulars; and consequently, the F.I.R. duly corroborates the dying declaration recorded and proved by P.W.4. There are no discrepancies in the oral testimony of the witnesses. Everything is duly proved. The presence of the accused is proved; and his act is proved by the doctor. In such circumstances, in our opinion, there is no substance in the appeal. The findings recorded by the learned trial Judge are correct. We, therefore, endorse the same. Our own findings are similar.

14. Consequently, the appeal has no substance. It is accordingly dismissed. Fees of the learned advocates appearing for the parties are quantified at Rs.1,500/- (Rupees One Thousand and Five Hundred only).